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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,596	03/10/2004	Paul D. Mannheimer	(P0236S-2) TYHC:0075-2/FL	6350
52144	7590	05/02/2007	EXAMINER	
Nelcor Puritan Bennett LLC c/o Fletcher Yoder PC P.O. BOX 692289 HOUSTON, TX 77269-2289			WINAKUR, ERIC FRANK	
			ART UNIT	PAPER NUMBER
			3768	
			MAIL DATE	DELIVERY MODE
			05/02/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/798,596

Applicant(s)

MANNHEIMER ET AL.

Examiner

Eric F. Winakur

Art Unit

3768

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 2/21/07 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

  
Eric F Winakur  
Primary Examiner  
Art Unit: 3768

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's traversal of the restriction requirement has been considered but is not persuasive. Applicant first contends that the claims may be interpreted to include the same essential characteristics of a single embodiment. However, Examiner notes that this is merely speculative, as the two identified species do not have claims that overlap in this manner, nor does the specification disclose such an embodiment. It is further noted, that the claims drawn to the species of claim 1, etc. are subject to rejection under 112, first paragraph, while the newly presented species appear to relate to embodiments disclosed in the specification. Applicant secondly contends that there is no "serious burden" to examining all of the claims. Applicant contends that since original claims broad enough to be generic to all of the presently presented claims were previously examined, that there is no burden to now examine all of the claims. However, although a generic claim was examined, Applicant now presents claims to particular species, each having different limitations with regard to the arrangement of the claimed features, with no generic claims remaining pending. The currently presented narrower claims each correspond with distinct species that have features requiring different searches. As such, the requirement is proper and is hereby maintained.

Applicant's traversal of the rejection under 112, first paragraph have been considered but are not persuasive. Applicant reiterates previously presented arguments against the rejection and provides additional arguments, alleging that the disclosure of the specification, page 9, lines 15 - 17 are sufficient to show that Applicant had possession of the claimed invention at the time of the invention. Certain of Applicant's remarks appear to argue aspects related to enablement and 112, second paragraph. Applicant is reminded that the question of written description is what was Applicant in possession of at the time of the filing. Applicant's disclosure may be enabled without satisfying the written description requirement. The portion of the specification (page 9, lines 15 - 17) relied upon is rather vague. The paragraph it is found in relates, in general, to alternate embodiments, and provides certain examples, with only few details. Although there is a correlation between the terms "limited sensor memory", "function" and "compressed" in the quoted portion, there is no further explanation of how the compressing is achieved. Applicant contends that somehow the functions are compressed to allow their storage on the memory, and that this interpretation is not contrary to the teachings of the specification. Examiner is not persuaded that such an interpretation is reasonable, given, as previously noted, that the remainder of the specification is concerned with storing coefficients on the sensor memory, but storing functions on the monitor. The specification, as originally filed teaches the use of two different functions, with different coefficients, but does not teach that the functions are stored on the sensor memory, nor would one reading the originally filed specification recognize that this would be done in certain disclosed embodiments. Mere allegations are not sufficient to demonstrate that Applicant had possession of the currently claimed subject matter at the time of the filing of the application, as required to meet 112, first paragraph requirements. One must review the originally filed specification, and interpret the teachings in light of the entirety of the specification. In doing so, one must conclude that Applicant was not in possession of the currently claimed invention at the time of filing. The rejection is hereby maintained.